IN THE HIGH COURT OF JUDICATURE AT MADRAS

(SPECIAL ORIGINAL JURISDCTION)

WEDNESDAY, THE SIXTH DAY OF JUNE

TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.P.Nos.36058 to 36061/03, 36595, 37129 to 37133, 35261, 35299 to 35313, 36258 to 36262 of 2003, 772 to 808, 1262 to 1266, 3116 to 3120, 3190 to 3194, 4660, 9527, 13532 to 13534, 31589, 31590, 32961 and 32962 of 2004, 3426, 3427, 26606 to 26619 and 27336 of 2005

The Union of India
owning Southern Railway
rep. by its General Manager
Park Town, Chennai-3. .. Petitioner

W.P.Nos.36058 to 36061, 36595, 37129 to 37133, 35261, 35299 to 35313, 36258 to 36262 of 2003, 772 to 808, 1262 to 1266,3116 to 3120, 3190 to 3194, 4660, 9527, 13532 to 13534,31589, 31590, 32961, 32962 of 2004, 3426, 3427, 26606 to 26619, 27336 of 2005

Vs.

1. The Principal District Judge
Vellore District, Vellore. ... Ist Respondent in

W.P.Nos.36058 to 36061, 36595, 37129 to 37133, 35261, 35299 to 35313, 36258 to 36262 of 2003, 772 to 808, 1262 to 1266, 3116 to 3120, 3190 to 3194, 4660, 9527, 13532 to 13534, 31589, 31590, 32961, 32962 of 2004, 3426, 3427, 26606 to 26619, 27336 of 2005

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Amirtham ... 2nd Respondent in W.P.NO.36058/03

Pichandi ... 2nd Respondent inW.P.NO.36059/03, 36595/03

Varadhan ... 2nd Respondent inW.P.NO.36060/03

Pachaiammal ... 2nd Respondent inW.P.NO.36061/03

Venkatrayalu ... 2nd Respondent inW.P.NO.37129/03

Dhanasekaran ... 2nd Respondent inW.P.NO.37130/03

Mani ... 2nd Respondent inW.P.NO.37131/03

Ammasi ammal ... 2nd Respondent inW.P.NO.37132/03

Shanthi ... 2nd Respondent inW.P.NO.37133/03

Sheela ... 2nd Respondent inW.P.NO.35261/03

Jaithumbi ... 2nd Respondent inW.P.NO.35299/03

Kalaiselvam ... 2nd Respondent inW.P.NO.35300/03

Saraswathi ... 2nd Respondent inW.P.NO.35301/03

Raju ... 2nd Respondent inW.P.NO.35302/03

Kumar ... 2nd Respondent inW.P.NO.35303/03

Rajamani@Rojamani ... 2nd Respondent inW.P.NO.35304/03

Kalaiselvam ... 2nd Respondent inW.P.NO.35305/03

Gunasekar ... 2nd Respondent inW.P.NO.35306/03

Devaki ... 2nd Respondent inW.P.NO.35307/03

Thangavelu ... 2nd Respondent inW.P.NO.35308/03

Valliammal ... 2nd Respondent inW.P.NO.35309/03

Gunasekaran ... 2nd Respondent inW.P.NO.35310/03 and 35313/03

Murugesan ... 2nd Respondent inW.P.NO.35311/03

Chandran ... 2nd Respondent inW.P.NO.35312/03

Mani
S/o.Ponnusamy ... 2nd Respondent inW.P.NO.36258/03

T. Subramani ... 2nd Respondent inW.P.NO.36259/03
S/o. Thangavelu

Mani
S/o. Gopal ... 2nd Respondent inW.P.NO.36260/03

Kantha @ Santhakumari ... 2nd Respondent inW.P.NO.36261/03

Lorudusamy ... 2nd Respondent inW.P.NO.36262/03

Murugesan
S/o. Poongavanam ... 2nd Respondent inW.P.NO.772/04

Sundaramurthy ... 2nd Respondent inW.P.NO.773/04

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Narayanasamy ... 2nd Respondent inW.P.NO.774/04
Mohan ... 2nd Respondent inW.P.NO.775/04
Ismail @ Babu ... 2nd Respondent inW.P.NO.776/04
Arumugam ... 2nd Respondent inW.P.NO.777/04
K. Kuppusamy ... 2nd Respondent inW.P.NO.778/04
Papammal ... 2nd Respondent inW.P.NO.779/04
Packianathan ... 2nd Respondent inW.P.NO.780/04
Elumalai ... 2nd Respondent inW.P.NO.781/04
Govindasamy ... 2nd Respondent inW.P.NO.782/04
Kumar ... 2nd Respondent inW.P.NO.783/04
Yogananda ... 2nd Respondent inW.P.NO.784/04
Vijaya ... 2nd Respondent inW.P.NO.785/04
Kamalam Ammal ... 2nd Respondent inW.P.NO.786/04
A.K. Subramani ... 2nd Respondent inW.P.NO.787/04
Dhanalakshmi ... 2nd Respondent inW.P.NO.788/04
Kannan ... 2nd Respondent inW.P.NO.789/04
Sundaram ... 2nd Respondent inW.P.NO.790/04
Dayalan ... 2nd Respondent inW.P.NO.791/04
Lakshmi ... 2nd Respondent inW.P.NO.792/04
Sudha ... 2nd Respondent inW.P.NO.793/04
Chinnathambi ... 2nd Respondent inW.P.NO.794/04
Suseela ... 2nd Respondent inW.P.NO.795/04
Sivakami ... 2nd Respondent inW.P.NO.796/04
K. Ramadass ... 2nd Respondent inW.P.NO.797/04
Abdul Rahim ... 2nd Respondent inW.P.NO.798/04
Sivakumar ... 2nd Respondent inW.P.NO.799/04
Jayaraman ... 2nd Respondent inW.P.NO.800/04
Elumalai ... 2nd Respondent inW.P.NO.801/04
Natarajan ... 2nd Respondent inW.P.NO.802/04
Jayalakshmi ... 2nd Respondent inW.P.NO.803/04
Perumal ... 2nd Respondent inW.P.NO.804/04
Gunasekar ... 2nd Respondent inW.P.NO.805/04
Kandasamy ... 2nd Respondent inW.P.NO.806/04
Raja ... 2nd Respondent inW.P.NO.807/04
Manivannan ... 2nd Respondent inW.P.NO.808/04
Durai Arasan ... 2nd Respondent inW.P.NO.1262/04
Rajendran ... 2nd Respondent inW.P.NO.1263/04
Parvathi ... 2nd Respondent inW.P.NO.1264/04
Durai ... 2nd Respondent inW.P.NO.1265/04
Raju ... 2nd Respondent inW.P.NO.1266/04
Kamatchi ... 2nd Respondent inW.P.NO.3116/04
Mahendran ... 2nd Respondent inW.P.NO.3117/04
Ravi ... 2nd Respondent inW.P.NO.3118/04
Rajeswari ... 2nd Respondent inW.P.NO.3119/04
V.R. Alamelu ... 2nd Respondent inW.P.NO.3120/04
Paramasivam ... 2nd Respondent inW.P.NO.3190/04
R. Govindaraj ... 2nd Respondent inW.P.NO.3191/04
Elumalai ... 2nd Respondent inW.P.NO.3192/04
Lakshmi ... 2nd Respondent inW.P.NO.3193/04

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Vellaisi Ammal	... 2nd Respondent inW.P.NO.3194/04
Varadhan	... 2nd Respondent inW.P.NO.4660/04
Elumalai	... 2nd Respondent inW.P.NO.9527/04
Poonkavanam	... 2nd Respondent inW.P.NO.13532/04
Varadhan	... 2nd Respondent inW.P.NO.13533/04
Lakshmi	... 2nd Respondent inW.P.NO.13534/04
Sekar	... 2nd Respondent inW.P.NO.31589/04
Gopal	... 2nd Respondent inW.P.NO.31590/04
Santhi	... 2nd Respondent inW.P.NO.32961/04
Paravathamma	... 2nd Respondent inW.P.NO.32962/04
Thanunisha	... 2nd Respondent inW.P.NO.3426/05
Sarasu	... 2nd Respondent inW.P.NO.3427/05
Venugopal	... 2nd Respondent inW.P.NO.26606/05
Pakiyam	... 2nd Respondent inW.P.NO.26607/05
Selvam	... 2nd Respondent inW.P.NO.26608/05
Jainabee	... 2nd Respondent inW.P.NO.26609/05
Vasantha	... 2nd Respondent inW.P.NO.26610/05
Athi Ammal	... 2nd Respondent inW.P.NO.26611/05
C. Natarajan	... 2nd Respondent inW.P.NO.26612/05
Kannayiram	... 2nd Respondent inW.P.NO.26613/05
Thangam	... 2nd Respondent inW.P.NO.26614/05
Anthoni	... 2nd Respondent inW.P.NO.26615/05
Swamikannu	... 2nd Respondent inW.P.NO.26616/05
Thangam	... 2nd Respondent inW.P.NO.26617/05
Ramamurthy	... 2nd Respondent inW.P.NO.26618/05
Kasiammal	... 2nd Respondent inW.P.NO.26619/05
Munusamy	... 2nd Respondent inW.P.NO.27336/05

Estate Officer
Divisional Railway Manager's Office
Works Branch, Southern Railway
Trichy. .. 3rd Respondents

W.P.Nos.36058 to 36061, 36595, 37129 to 37133, 35261, 35299 to 35313, 36258 to 36262 of 2003, 772 to 808, 1262 to 1266, 3116 to 3120, 3190 to 3194, 4660, 9527, 13532 to 13534, 31589, 31590, 32961, 32962 of 2004, 3426, 3427, 26606 to 26619, 27336 of 2005

Petitions under Article 226 f the Constitution of India praying that in the circumstances stated therein and in the respective affidavits filed in support thereof the High Court will be pleased to issue writs of certiorarified Mandamus calling for the entire records of the first respondent under the (PPE) in

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Civil Miscellaneous Appeal Nos. 15/99, 12/99, 6/99. 3/99. 10/99, 9/99, 4/99, 2/99, 8/99, 5/99, 1/99, 14/99, 35/99, 41/99, 36/99, 39/99, 11/99, 32/99, 42/99, 40/99, 33/99, 47/99, 44/99, 37/99, 43/99, 50/99, 46/99, 31/99, 45/99, 48/99, 49/99, 38/99, 55/99, 53/99, 54/99, 56/99, 59/99, 51/99, 57/99, 52/99, 34/99, 58/99, and 60/99, respectively including the order and decree dated 31.8.2001 and quash the same and direct the 2nd respondent to vacate and handover possession of the property encroached by the 2nd respondent to the Railway Administration. (W.P.Nos.36058, 36059, 35301, 35306, 35307, 35308, 35309, 35310, 35311, 35312, 35313, and 36261 of 2003 772/04, 773, 778, 779, 780, 783, 784, 785, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 804, 808, 1264, 3119, 3192 and 3193 of 2004 and 26610/05, 26618/05 and 27336/05

II. Civil Miscellaneous Appeal Nos. 70/99, 72/99, 67/99, 71/99, 66/99, 65/99, 63/99, 74/99, 76/99, 75/99, 61/99, 62/99, 69/99, and 73/99, including the order and decree dated 20.11.01 and quash the same and direct the 2nd respondent to vacate and handover possession of the property encroached by the 2nd respondent to the Railway Administration.
(W.P.Nos.36060, 36061, 36595, 37129, 37131, 37132, 35300, 35302, 35303, 35304, 35305, 36258, 35299 and 36262 of 2003.

III Civil miscellaneous Appeal Nos. 19/99, 16/99, 17/99, 18/99, 23/99, 30/99, 20/99, 21/99, 26/99, 29/99, 24/99, 25/99, 68/99, 28/99, 27/99, AND 22/99, including the order and decree dated 20.9.2001 and quash the same and direct the 2nd respondent to vacate and handover possession of the property encroached by the 2nd respondent to the Railway Administration (W.P.Nos.37130, 37133, 36259, 36260/03, 774, 775, 776, 777, 781, 782, 786, 787, of 2004, 26609, 26611/05, 26612/05, 26613/05.

IV. Civil Miscellaneous Appeal Nos. 64/99, 85/99, 86/99, 77/99, 90/99, 78/99, 88/99, 84/99, 80/99, 81/99, 89/99, 82/99, and 79/99, including the order and decree dated 18.12.2001 and quash the same and direct the 2nd respondent to vacate and handover possession of the property encroached by the 2nd respondent to the Railway Administration.
(W.P.Nos.35261/03, 802/04, 803/04, 806/04, 807/04 3116/04, 3117/04, 3120/04, 3190/04, 4660/04, 26614/05, 26616/05 and 26619/05.

V. Civil Miscellaneous Appeal No.99/99, 104/99, 98/99, 91/99, 93/99, 95/99, 94/99, 97/99, 102/99, 101/99, 105/99, and 100/99, including the order and decree dated 25.1.2002 and quash the same and direct the 2nd respondent to vacate and handover possession of the property encroached by the 2nd respondent to the Railway Administration. (W.P.Nos.805/04, 1262/04, 1263/04, 1265/04,

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1266/04, 3118/04, 3191/04, 3194/04, 13534/04, 26608/05, 26615/05 and 26617/05.

VI. Civil Miscellaneous Appeal Nos.122/99, 111/99, 106/99, 1/2000, 117/99, 112/99, 2/ 2000, 121/99, 110/99, 107/99, 113/99, respectively including the order and decree dated 15.2.2002 and quash the same and direct the 2nd respondent to vacate and handover possession of the property encroached by the 2nd respondent to the Railway Administration. (W.P.Nos.9527/04, 13532/04, 13533/04, 31589/04, 31590/04, 32961/04, 32962/04, 3426/05, 3427/05, 26606/05 and 26607/05.

ORDER:- These Petitions coming on for hearing on this day upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of Mr.V.G. Suresh Kumar, Advocate for the Petitioner in all the Petitions and the Respondents in each of the Petitions not appearing in person or by the Advocate the Court made the following order:-

COMMON ORDER

(Made by P.D.DINAKARAN,J.)

The above writ petitions are directed against the order of the appellate authority setting aside the order of eviction passed by the Estate Officer, evicting the contesting respondents/encroachers, who are about 125 in number, from the public premises of an extent of 3.36 acres located in Survey No.722/2, Ward 5, Block 16, Vellore District, on the ground that the Estate Officer had not followed the procedure prescribed under the Act viz.,

(i) Notice under Section 4 of the Act;
(ii) Recording of evidence that may be produced in support of the notice;
(iii) Giving reasonable opportunity to the unauthorised occupant to represent the case;
(iv) the authority must be satisfied that the public premises is unauthorisedly occupied;
(v) the authority afterwards has to make an order of eviction;
(vi) such an order of eviction must be supported by reasons;
(vi) that order must direct the unauthorised occupier to vacate the premises on such date as may be specified in that order; and
(vii) the copy of the said order has to be affixed on the outer or in some other conspicuous part of public premises in question.

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2. The learned counsel for the appellant, challenging the finding of the appellate authority that the Estate Officer had not followed the procedure prescribed under the Act as mentioned above, invited our attention to the various provisions of the Act and placed before us the entire records for our perusal to substantiate that each and every procedure prescribed under the Act had been duly followed and complied with before passing the order of eviction by the Estate Officer.

3. Unfortunately, there is no representation on behalf of the contesting respondents/encroachers. Therefore, we are constrained to wade through the entire file relating to the impugned order of eviction as well as the order made by the appellate authority.

4.1. The appellate authority allowed the appeals, taking note of the fact that the encroachers have not been given notice of the joint inspection of the impugned public premises by the revenue authorities of the State Government and the railway officials to decide whether the impugned public premises belongs to the railway authorities or not.

4.2. It is also brought to our notice that during the joint inspection by the revenue authorities of the State Government and the railway authorities on 4.5.1999, it was found that the impugned property belong to Railways.

4.3. When the State Government themselves conceded that the impugned land belongs to the Railways, there is no need to issue notice for the joint inspection to the encroachers, who have no say in the matter of deciding as to whom the public premises belong to. Therefore, non issuance of notice to the encroachers for joint inspection on 4.5.1999 would not, in any way, amount to violation of principles of natural justice nor would vitiate the eviction proceedings, because the scope and purpose of the joint inspection is only to decide whether the impugned premises is a poramboke land that belongs to the State Government or a public premises belonging to the railway authorities, but not to decide any rights conferred on the encroachers. It is, therefore, not open for the encroachers to contend that the Estate Officer has no jurisdiction to initiate the impugned eviction proceedings under the provisions of the Act as though the property belongs to the State Government. We are, therefore, of the considered opinion that the learned appellate authority had got himself misdirected in holding that principles of natural justice were violated due to non issuance of notice to the encroachers for joint inspection held on 4.5.1999 by the revenue authorities of the State Government and the railway authorities.

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5.1. It is settled law that no person has right to encroach, by erecting any structure or otherwise, a place which is reserved or earmarked for public purpose and the public authorities are entitled to initiate action under the provisions of the Act to evict the unauthorised occupants.

5.2. The Act was enacted to provide a speedy machinery for eviction of unauthorised occupants of public premises by way of summary eviction. Section 5 of the Act provides for eviction of unauthorised occupation. Section 7 of the Act provides for recovery of rent and damages in respect of public premises from the persons who had unauthorisedly occupied the same, by appointing Estate Officers, who have been given power, after necessary enquiry to pass orders of eviction of such unauthorised occupants. The Estate Officer has also been given powers to remove and to order demolition of unauthorised constructions. Since the encroachment of the public premises are considered as a public menace which are required to be discouraged in the larger public interest, as no one has got the right to occupy or encroach the public premises, the Estate Officer is empowered to exercise his power of enquiry by adopting a summary eviction proceedings giving notice within seven days to the respective occupants, which is mandatory, not merely directory in character, as the failure to make an effective reply to the notice may result in loss of occupation of the premises.

5.3. Longer the delay, the greater would be the danger of permitting the encroachers claiming semblance of right to obstruct removal of encroachment. As the legislature considers it in its wisdom that under the general law the eviction process is dilatory and provides for other speedier procedure for evicting unauthorised occupants or sub tenants, it cannot be said that such summary eviction procedure is violative of any of the fundamental rights much less Article 21 of the Constitution of India. Because, under the Scheme of the Act, a reasonable opportunity is provided, which has been, in the instant case, duly complied with by issuing notice in Form A on 19.12.1997 and conducting enquiry on 21.1.1998 and thereafter, passing an order of eviction on 3.6.1999 in Form B.

5.4. It is also pertinent to note that since a defence was raised by seven representatives on behalf of the encroachers, during the personal hearing, that the public premises in question belongs to the State Government, a joint inspection was also conducted on 4.5.1999 by the revenue authorities of the State Government and the railway authorities, which reads as follows: (as evident from the records)

" 4.5.1999

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To:
The Divisional Railway Manager
Works Branch
Trichy-1.

Sub: Encroachment of Railway land @ Vellore (Indira Nagar) - Ref.KM.150/6-9.

Ref: DRM/W/TPJ Letter No.T/W274/V/VM/VLR/ Vol I of 9.3.99.
SE/P/VLR Letter No.VLR/14, dated 23.4.99
Town Surveyor/Vellore letter No.Nil dated 28.4.99.

With reference to the above it is stated that today we have jointly inspected over KM.150/6-9, conducted the Survey and ensured the Railway limits regarding the Indira Nagar, Ward No.5, Block No.16 and T.S.No.722/2 of Vellore Cantt.

And it is seen from the Survey that about 148 No's of encroachments are existing in the above said T.S.No.722/2 @ KM 150/6-9.

Sd/- sd/-
Village Administrative Officer Assistant Engineer
Vellore Town South Srly., Villupuram
Vellore District."

5.5. The above proceedings clearly belies the stand taken by the encroachers that the premises in question belongs to the State Government and therefore, the Estate Officer has no authority or jurisdiction to issue notice in Form A because the entire premises at Survey No.722/2, Ward 5, Block 16, Vellore District, falls within the Railway limits.

5.6. If that be so, we are unable to sustain the order of the appellate authority in arriving at a conclusion that the Estate Officer has not followed the procedure, because, as rightly pointed out by the learned counsel for the petitioner, notice in Form A was issued on 19.12.1997 and enquiry was conducted, objections of seven representatives were considered, and in order to appreciate the correctness of the stand taken by the representatives, a joint inspection was conducted by the revenue authorities of the State Government and the Railway officials,

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which revealed that the entire premises belong to railway and finally an order of eviction in Form B was issued on 3.6.1999. Since there is no procedural lapses required to be followed in the summary eviction proceedings under the Scheme of the Act, it may not be proper for the appellate authority to jump to the conclusion that the Estate Officer had not followed the procedure. The very object of the Act enabling the Estate Officer to evict the unauthorised occupants from the public premises by way of summary eviction proceedings is to protect the public property and to discourage the encroachments, as any further delay in evicting the encroachers would be a great danger.

5.7. Undoubtedly, it is not only the duty of the public authorities to ensure that the public premises are not encroached, but also it is the fundamental duty of every citizens not to encroach the public premises.

In view of the reasons aforementioned, we find it difficult to sustain the orders of the appellate authority, and accordingly, the same are set aside and the writ petitions are allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kpl/sasi

To

1. The Principal District Judge
   Vellore District, Vellore.

2. The Estate Officer
   Divisional Railway Manager's Office
   Works Branch, Southern Railway
   Trichy.

1 cc to Mr.V.G. Suresh Kumar, Advocate, Sr. 32399

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Dated: 6.6.2007

ORDER

W.P.Nos.36058 to 36061, etc batch

Allowing the Petition to issue writs of Certiorarified Mandamus as stated within.

BV (CO)
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